

Remarks

Claims 11-92 are currently pending. With this Amendment, claim 23 has been amended and claims 11-22, 24-57, 67-71, 73-75, and 77-92, drawn to non-elected subject matter, and claim 59 have been cancelled without prejudice to Applicant's right to pursue the subject matter of the cancelled claims in one or more related applications. Exemplary support for the amendment to claim 23 can be found from the last paragraph on page 10 to the second paragraph on page 14 and from the fourth paragraph of page 16 to the third paragraph on page 17 of the specification as originally filed. As such, Applicant asserts that no new matter has been introduced by this amendment. Therefore, upon entry of this amendment, claims 23, 58, 60-66, 72, and 76 will be pending.

At the recommendation of the Examiner, the specification has been amended to incorporate the status of the parent application. Applicant asserts that the amendment to the specification does not introduce new matter.

Applicant requests entry and consideration of the amendments and remarks into the record.

I. The Rejections For Lack of Enablement Should Be Withdrawn

Claims 23, 58, and 60-66 are rejected under 35 U.S.C. § 112, first paragraph, for allegedly containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The gravamen of this rejection is that the specification does not teach how a composition comprising an anti-CD123 antibody and a cytotoxic agent, wherein the anti-CD123 antibody and the cytotoxic agent are not attached, can specifically target and impair cancerous progenitor cells.

Although Applicant does not acquiesce to the propriety of this rejection, the claims have been amended to recite that the anti-CD123 antibody is conjugated to the cytotoxic agent. Because the Examiner has acknowledged that the specification is enabling for the methods of the amended claims (see page 3, paragraph 3 of the Office Action mailed on September 26, 2008), Applicant asserts that the Examiner's rejection of the claims as lacking enablement is obviated.

Therefore, Applicant respectfully requests that the rejection of claims 23, 58, and 60-66, under 35 U.S.C. § 112, first paragraph, for lack of enablement, be withdrawn.

II. The Non-Statutory Obviousness-Type Double Patenting Rejection Should be Held in Abeyance

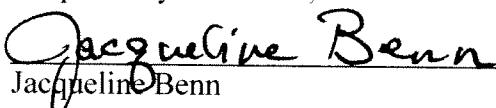
Claims 23, 58-66, 72, and 76 are rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,733,743. Applicant respectfully requests that this rejection be held in abeyance until such time as there is allowable subject matter. At such time, Applicant will consider whether the filing of a terminal disclaimer is warranted.

Conclusion

Applicant respectfully requests entry and consideration of the foregoing amendments and remarks. No new matter has been introduced. The claims are believed to be free of the art and patentable. Withdrawal of all the rejections and an allowance are earnestly sought.

Date: February 25, 2009

Respectfully submitted,

 43,492
Jacqueline Benn (Reg. No.)
JONES DAY
222 East 41st Street
New York, NY 10017
(212) 326-3939

Enclosure